FILED
FEB 14 1991
OFFICE OF THE CLERK

No. 90-1131

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *et al.*,
Petitioners,

v.

CHESAPEAKE WESTERN RAILWAY, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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February 1991

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QUESTION PRESENTED

Whether a district court, which under *Consolidated Rail Corp. v. Railway Labor Executives' Association*, 109 S. Ct. 2477 (1989), lacks jurisdiction to entertain a union's Railway Labor Act challenge to a railroad's action when the railroad is acting in accordance with its "at least arguable" interpretation of its labor agreement, acquires such jurisdiction if the union proposes that the agreement be changed.

LIST OF PARTIES AND RULE 29.1 LIST

The names of the parties to the proceeding are:

Petitioners: Railway Labor Executives' Association; American Railway & Airway Supervisors Association (Division of TCU); American Train Dispatchers Association; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Brotherhood of Railway Carmen (Division of TCU); International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; Sheet Metal Workers' International Association; Transportation Communications International Union (TCU); United Transportation Union; and Yardmasters Department, UTU.

Respondents: Norfolk Southern Corporation; Norfolk Southern Railway Company; Norfolk and Western Railway Company; and Chesapeake Western Railway Company.

The common stock of respondent Norfolk Southern Railway Company (named "Southern Railway Company" until December 31, 1990) is wholly owned by respondent Norfolk Southern Corporation. Respondent Norfolk and Western Railway Company is wholly owned by Norfolk Southern Railway Company. Respondent Chesapeake Western Railway Company is wholly owned by Norfolk and Western Railway Company.

The subsidiaries of respondent Norfolk Southern Railway Company, other than wholly owned subsidiaries, are:

High Point, Randleman, Asheboro and Southern Railroad Company
Mobile and Birmingham Railroad Company
Norfolk and Portsmouth Belt Line Railroad Company
North Carolina Midland Railroad Company, The
North Carolina Railroad Company, The
Richmond-Washington Company
South Western Rail Road Company, The
State University Railroad Company
Yadkin Railroad Company

The subsidiaries of Norfolk and Western Railway Company, other than wholly owned subsidiaries, are:

Norfolk and Portsmouth Belt Line Railroad Company
Wabash Railroad Company

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents Norfolk Southern Corporation, Norfolk Southern Railway Company ("NSR"), Norfolk and Western Railway Company ("NW"), and Chesapeake Western Railway Company respectfully request that this Court deny the petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The September 17, 1990 decision of the court of appeals is reported at 915 F.2d 116 and is reproduced in the appendix to the petition ("Pet. App.") at 1a.

The district court's February 16, 1990 bench ruling is not reported and is reproduced in the appendix to the petition at 15a. The district court's June 13, 1990 memorandum opinion is reported at 738 F. Supp. 1544 and is reproduced in the appendix to the petition at 32a.

JURISDICTION

The court of appeals entered its decision on September 17, 1990. On December 10, 1990, the Chief Justice granted petitioners' application for an extension of time in which to file their petition, to and including January 15, 1991. The petition for a writ of certiorari was filed on January 15, 1991. Jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 6 of the Railway Labor Act, 45 U.S.C. § 156, provides:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by

> either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

Other statutory provisions are reproduced in the appendix to the petition at 66a.

STATEMENT OF THE CASE

The petition seeks review of a decision of the United States Court of Appeals for the Fourth Circuit affirming an order of the United States District Court for the Eastern District of Virginia dismissing petitioners' civil action for lack of subject matter jurisdiction. In that action, petitioners Railway Labor Executives' Association ("RLEA") and fourteen labor unions had invoked the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, seeking to require respondents to refrain from selling or leasing their rail lines to others, or engaging in intracorporate transfers of, or grants of trackage rights over, their rail lines pending the completion of RLA bargaining over the unions' proposals for changes in respondents' labor agreements that would limit respondents' right to engage in such transactions.

Respondent Norfolk Southern Corporation controls the other respondents, which are all railroads operated as a coordinated system often referred to gen-

erally as "Norfolk Southern" or the "NS system."[1] Respondents are all "carriers" for purposes of the RLA. The petitioner unions bargain collectively with the NS carriers and have entered into labor agreements with the carriers governing rates of pay, rules, and working conditions of the employees they represent.[2]

Norfolk Southern, like other large railroad systems, realized several years ago that its ability to survive as a profitable entity depends on its ability to sell, lease, and otherwise dispose of marginal and unprofitable rail lines. By October 1987, Norfolk Southern had identified approximately 2700 miles of rail lines that were either already unprofitable or would not repay the capital investment that Norfolk Southern would have to make in order to be able to continue to operate them profitably. Inevitably, all these lines must be abandoned, sold, or otherwise disposed of, and Norfolk Southern decided to eliminate them from its system within three years.

Approximately 1500 of the 2700 miles of line had no potential for profitable operation by anyone and were to be abandoned, while the remaining 1200 miles had the potential for profitable operation by inde-

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[1] Until December 31, 1990, NSR's name was "Southern Railway Company," and this is the name that is used in the decisions of the courts below. NW was wholly owned by Norfolk Southern Corporation from 1982 until January 1, 1991, when its stock was transferred to NSR.

[2] Petitioner RLEA is an association the membership of which consists of the chief executives of labor unions (including twelve of the petitioner unions, and others); RLEA itself is not a labor union and does not represent any employees of the NS system carriers for purposes of collective bargaining.

pendent "short line" operators—railroads that could provide more responsive, individualized service to shippers, develop new customers, and operate at lower cost than could Norfolk Southern. To maximize the likelihood of preserving rail service, Norfolk Southern decided to lease the lines in the latter category, typically for twenty-year periods, on terms that would require relatively low initial investments by the short line operators and would provide incentives for those operators to maintain the flow of traffic to and from the Norfolk Southern system.[3] Norfolk Southern launched the leasing program, known as the "Thoroughbred Short Line" ("TSL") program, in early 1988, with considerable publicity. JA 236-38, 248-49.

The first TSL lease was consummated in November 1988. By late 1989, Norfolk Southern had completed fourteen additional leases under the program, involving an aggregate of approximately 810 miles of line, and planned to engage in additional TSL leases. JA 142-43, 206-13.

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[3] The leases establish a rental obligation that will produce a calculated return on the line's liquidation value; but the leases also provide for a credit against rental payments for every rail car interchanged with the NS system, calculated so that if the new operator produces traffic equal to the traffic on the line in recent years, the operator will pay no rent at all. All parties benefit from such an arrangement: the NS system continues to handle a substantial share of traffic originating and terminating on the short line, thereby receiving some revenues from a line that would otherwise be abandoned; customers continue to receive service; and the new short line operator can operate without an overwhelming debt burden and can realize some profit, enabling it to continue operations. JA 238-39 (citations to "JA" refer to the Joint Appendix filed in the court of appeals).

Norfolk Southern's line disposition effort was not limited to the TSL program. For example, the largest line disposition planned by Norfolk Southern—the sale and sublease of more than 500 miles of rail line to Wheeling Acquisition Corporation (the "Wheeling transaction")—though contemplated in 1987 and identified on maps distributed publicly in early 1988, was not within the TSL program. JA 239-40.[4]

In all of these cases, the new operators operated the lines with their own employees, under their own work rules.[5]

All of Norfolk Southern's challenged line dispositions are subject to regulation under the exclusive authority of the ICC. Most of the TSL leases have been carried out pursuant to authorization obtained from the ICC under 49 U.S.C. § 11343, which governs transfers of rail lines from one carrier to another. The ICC is mandated to impose on such transactions the extensive "employee protective conditions" re-

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[4] In February 1990, just prior to the district court's decision in this case, the individual union petitioners served notices on respondent NW under RLA § 6, seeking to bargain over the effects of the (then pending) Wheeling transaction on employees. The Wheeling transaction was consummated on May 17, 1990. NW has subsequently entered into new labor agreements resolving the section 6 notices of all but two of the unions; those unions' notices, along with the counterproposals of NW and its affiliates, are now in mediation under the auspices of the National Mediation Board.

[5] In addition to transactions with unaffiliated entities, the NS carriers engage in leases, grants of trackage rights, and other transactions among themselves. The unions challenged these intracorporate transactions as well, but these transactions present no special considerations, and petitioners did not, on appeal, press any claims specific to intracorporate transactions.

quired by 49 U.S.C. § 11347; these conditions provide generous compensatory benefits, including wage protection for up to six years, for employees adversely affected by a covered transaction. JA 114.[6] Other transactions involved lessees or purchasers that, prior to consummation, were not classified as "carriers" under the Interstate Commerce Act; these transactions were not subject to § 11343 but instead were carried out under 49 U.S.C. § 10901. The ICC generally does not impose employee protective conditions on its authorization of transactions under § 10901, and did not do so in these cases.

The NS system carriers do not bargain with their unions, under the RLA, with respect to any of their decisions to enter into sales, leases, and other railroad transactions.[7]

Between April and July 1988 (in one case in July 1989), the individual union petitioners, pursuant to RLA § 6, served notices on the NS carriers proposing to add new provisions to existing labor agreements

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[6] Ordinarily, transactions subject to § 11343 require prior approval by the ICC. Under 49 U.S.C. § 10505, however, the ICC grants, to transactions like the TSL leases, an "exemption" from this prior approval requirement; and such exemptions have been sought for all the TSL leases that have been subject to § 11343. In all such cases, § 10505(g) requires that the ICC impose on these transactions the employee protective conditions mandated by § 11347. The conditions imposed are those adopted in *Mendocino Coast Ry.—Lease and Operate*, 354 I.C.C. 732 (1978), *modified*, 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

[7] When the ICC imposes labor protective conditions on a transaction, the NS carriers give notice and, when requested, bargain with the affected unions as required by the protective conditions.

that would place limitations on the carriers' ability to dispose of rail lines and abolish jobs. The notices, as a general matter, proposed adoption of agreement terms that would require economic protections for employees affected by a line disposition; would require the carriers to give the unions six months' advance notice before disposing of a line; and would obligate the carriers to require that any purchaser or lessee of a line hire NS employees and assume those employees' existing labor agreements. JA 147. The unions' section 6 notices—which were similar to notices the unions served on most of the nation's railroads—were referred to national bargaining, along with the railroads' counterproposals and other section 6 notices pertaining to other issues. JA 155. The section 6 notices subsequently proceeded through mediation before the National Mediation Board ("NMB"), pursuant to 45 U.S.C. § 155; the notices of all the unions other than petitioner International Association of Machinists were referred to a Presidential Emergency Board created pursuant to 45 U.S.C. § 160, JA 327-28; and that board presented its recommendations to the President on January 15, 1991.

Petitioners filed this civil action on August 4, 1989, alleging that three particular Norfolk Southern transactions violated obligations assertedly imposed on the NS carriers by the RLA.[8] Petitioners later amended

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[8] The challenged transactions were a lease of a rail line by NSR to an entity unaffiliated with Norfolk Southern Corporation and a lease and a grant of trackage rights conducted within the NS corporate family. The original group of plaintiffs included five labor unions in addition to the petitioners here, and the original group of named defendants also included the unaffiliated railroad that had leased the rail line from NSR. The five labor

their complaint to add claims more broadly challenging Norfolk Southern's overall line disposition effort. The amended complaint principally alleged that by engaging in such transactions the NS carriers violated obligations they assertedly owed to the unions under RLA § 6, as a result of the individual unions' having served their notices in 1988 and 1989 seeking to modify their existing labor agreements to include new terms relating to the disposition of rail lines. JA 38. The unions sought broad injunctive relief to prohibit the NS carriers from disposing of any rail lines "without fully complying with their obligations under the Railway Labor Act including their obligations to maintain the status quo until bargaining is complete over the individual rail labor unions' Section 6 notices concerning sales and transfers of lines." JA 39.[9]

Respondents moved to dismiss petitioners' civil action for lack of subject matter jurisdiction, under *Consolidated Rail Corp. v. Railway Labor Executives' Association*, 109 S. Ct. 2477 (1989) ("*Conrail*"), on the ground that the controversy presented by the complaint was a "minor dispute" subject to mandatory arbitration under RLA § 3, 45 U.S.C. § 153. Petitioners cross-moved for summary judgment on the merits of their RLA status quo claim.

In a February 16, 1990 bench ruling, Pet. App. 15a, confirmed by an order entered the same date,

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unions and the unaffiliated railroad were later dropped from the lawsuit and are not involved here.

[9] Petitioners' amended complaint also purported to assert claims under other provisions of the RLA, 45 U.S.C. §§ 152 Third, Seventh, and Ninth; those claims were dismissed with the primary RLA § 6 claim, and petitioners did not press them on appeal.

id. 12a, and by a memorandum opinion issued June 13, 1990, *id.* 32a, the district court granted respondents' motion to dismiss, holding that petitioners' challenge to the Norfolk Southern rail line dispositions presented a minor dispute because it is at least arguable that the parties' existing labor agreements recognize the carriers' right to take employee-related actions in connection with line dispositions. *Id.* 12a-13a, 17a-18a, 40a-49a. The court found, in particular, that the NS carriers' labor agreements "include provisions, in various forms, explicitly reserving to NS, NW and [NSR] the flexibility to abolish jobs and furlough employees as a result of a sale, lease, abandonment, or other disposition of a rail line," *id.* 42a-43a (footnote omitted); and further found that the carriers' "consistent past practice" of disposing of rail lines by abandonment, sale, and lease "furnishes persuasive support for [their] claim that the collective bargaining agreement provisions are sufficiently broad to cover the employment issues spawned by the line transactions in issue," *id.* 46a-47a. The court then concluded that because the controversy presented a minor dispute which must be resolved through RLA § 3 arbitration, petitioners were not entitled to the injunctive relief they sought as the NS carriers were under no status quo obligation requiring them to complete RLA bargaining over the unions' notices prior to engaging in the transactions that the unions, in those notices, sought to bar. *Id.* 49a-53a.[10]

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[10] The district court did not rule on respondents' alternative motions for (1) summary judgment with respect to petitioners' claim of violation of the status quo obligation of RLA § 6, and (2) partial summary judgment with respect to certain of

The court of appeals affirmed the dismissal of the civil action for lack of subject matter jurisdiction on the ground that a minor dispute was presented. The court found that Norfolk Southern asserted "that the furlough and reduction in force provisions of its collective bargaining agreement inescapably imply that it has unimpeded power to sell lines and lay off workers," and that Norfolk Southern "presented evidence

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petitioners' claims, which respondents contended were barred by the applicable statute of limitations and by reason of waiver. Pet. App. 13a, 52a.

The district court did hold, as an alternative ground for granting respondents' motion to dismiss, with respect to certain of the challenged transactions, that it lacked jurisdiction over petitioners' lawsuit insofar as petitioners sought to enjoin the carrying out of transactions authorized under 49 U.S.C. § 11343, because those transactions are within the exclusive jurisdiction of the Interstate Commerce Commission. Pet. App. 53a-57a. The court of appeals confined its decision to a review of the district court's primary holding on the "minor dispute" point, and the issue of the ICC's exclusive jurisdiction is not presented in the petition in this Court.

Finally, in addition to moving to dismiss petitioners' claims, respondents had counterclaimed for a declaratory judgment that the dispute over petitioners' rail line dispositions was a minor dispute under the RLA for which arbitration was petitioners' sole remedy, and for an injunction to bar petitioners from striking over the dispute; and respondents had moved for summary judgment on their counterclaim. The district court denied the request for declaratory relief "on the ground that such relief is encompassed in the dismissal of plaintiffs' complaint" on minor dispute grounds, Pet. App. 60a, and denied the request for injunctive relief on the ground that there was no imminent strike threat, *id.* 28a-31a, 60a. Respondents' counterclaim was not addressed by the court of appeals, and the petition in this Court does not raise any issue with respect to the counterclaim.

of a past practice of acquiescence by the unions in this interpretation." Pet. App. 7a. Accordingly, relying on *Conrail*, 109 S. Ct. at 2482, the court concluded that respondents' position was " 'arguably justified' " under their labor agreements and therefore the dispute was "minor" and the civil action must be dismissed for lack of jurisdiction.

The court of appeals found that because respondents' actions were at least arguably justified by existing labor agreements, it was immaterial that the minor dispute had been presented to the district court only after the unions had served notices under RLA § 6 seeking to change those agreements to restrict the carriers' right to dispose of their rail lines. The court of appeals concluded that "[t]he service of a § 6 notice and the beginning of bargaining over the proposed changes does not convert a minor dispute into a major one." Pet. App. 9a (citing *General Committee of Adjustment v. CSX R.R. Corp.*, 893 F.2d 584, 594 (3d Cir. 1990); *CSX Transportation, Inc. v. United Transportation Union*, 879 F.2d 990 (2d Cir. 1989), *cert. denied*, 110 S. Ct. 720 (1990)).[11]

ARGUMENT

1. The court of appeals' decision is not inconsistent with any decision of this Court. In deciding that subject matter jurisdiction is lacking over petitioners' RLA claims, the court of appeals correctly followed *Conrail*; it could not have reached any other result.

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[11] The court of appeals also dismissed as moot that portion of petitioners' appeal that sought reversal of the district court's refusal to enjoin the consummation of the Wheeling transaction. Pet. App. 5a-6a. The petition in this Court does not raise any issue with respect to this action of the court of appeals.

Petitioners sought to enjoin actions taken by respondents that assertedly caused petitioners' members to be furloughed, displaced, or otherwise adversely affected in their employment. Respondents demonstrated that their actions affecting employees were arguably justified by their existing labor agreements (including implied terms arising from past practices). Accordingly, the dispute that petitioners sought to present to the district court was "minor." *Conrail*, 109 S. Ct. at 2482 ("Where an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement."). Because the dispute is minor, it is within the exclusive jurisdiction of an adjustment board. *Id.* at 2480-81; 45 U.S.C. § 153. And, because it is minor, the carriers are free to act in accordance with their interpretation of the existing agreements—and continue to furlough, displace, and otherwise affect employees as a result of line sales and leases—pending determination by an adjustment board as to whether that interpretation is correct. *Conrail*, 109 S. Ct. at 2481, 2484. Petitioners' claims were outside the jurisdiction of the district court. *Id.* at 2481, 2484.

Petitioners rely on their section 6 notices, which sought prospective contract rights, as somehow trumping the minor dispute over the existing contractual right of the NS carriers to take actions that affect employees in connection with line dispositions and thereby transforming the controversy into a "major" dispute. There is no basis, however, for trumping the jurisdictional bar that *Conrail* found to exist in minor dispute cases. The pendency of the unions' section 6 notices, which sought to *change* agreements, is

entirely irrelevant to deciding what these carriers can do today under *existing* agreements. The courts of appeals hearing line sale cases have agreed that such notices "have no transforming or alchemizing effect" upon line sale minor disputes. *CSX Transportation, Inc. v. United Transportation Union*, 879 F.2d at 1000; *accord General Committee of Adjustment v. CSX R.R. Corp.*, 893 F.2d at 594.[12]

Petitioners, in urging the rule that a union's presentation of a claim of status quo violation restores the jurisdiction otherwise lacking in connection with a minor dispute, seek to undo *Conrail*. The carrier's right to apply its own interpretation of its agreement, so long as that interpretation is at least arguable, surely is not so fragile as to be subject to destruction at the union's will. Nor does it rightly fall to a union to determine, by its unilateral choice to serve or withhold a section 6 notice, whether the federal courts have jurisdiction to hear the union's challenge to the employer's acts.

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[12] *See also Air Line Pilots Association v. Eastern Air Lines, Inc.*, 863 F.2d 891, 900 (D.C. Cir. 1988) ("a rule that allows a party to characterize all disputes as 'major' through a unilateral action such as serving § 6 notices on the other party is unwise and contrary to the two-track procedure of the RLA"), *pet. for cert. filed*, No. 88-1403 (February 24, 1989); *Chicago & North Western Transportation Co. v. Railway Labor Executives' Association*, 855 F.2d 1277, 1285, 1287 (7th Cir.), *cert. denied*, 109 S. Ct. 493 (1988); *Railway Labor Executives' Association v. Boston & Maine Corp.*, 808 F.2d 150, 156 (1st Cir. 1986), *cert. denied*, 484 U.S. 830 (1987); *Rutland Ry. v. Brotherhood of Locomotive Engineers*, 307 F.2d 21, 33-36 (2d Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Hilbert v. Pennsylvania R.R.*, 290 F.2d 881, 885 (7th Cir.), *cert. denied*, 368 U.S. 900 (1961).

The decision of the court of appeals preserves the unions' right to invoke the RLA major dispute process as they choose and invoke federal court jurisdiction to enforce the RLA § 6 status quo requirement when the employer cannot satisfy the *Conrail* standard. The decision is consistent not only with *Conrail* but with the interest of orderly administration of the RLA which *Conrail* serves. It does not merit review.

2. The question presented in this case is one of federal court jurisdiction, not determination of what the status quo is. The minor dispute question and the status quo question are not the same thing, and there is no merit to petitioners' effort to fold the two together. Thus, petitioners' "Question Presented" is simply *not* presented. Respondents have not claimed "a contractual right to alter the actual, objective working conditions of [their] employees while bargaining for an agreement to cover those conditions," as petitioners say, Pet. at i. Nor, despite petitioners' repeated assertions (Pet. 13, 17, 19, 20, 22, 23), have respondents claimed a contractual right "to alter the status quo." Rather, as the courts below concluded, see Pet. App. 7a-8a & n.4, the determination that a minor dispute is presented dictates that jurisdiction over the civil action is absent and precludes judicial inquiry into the merits of the unions' claim that the carrier has altered the status quo.

Minor dispute cases are all the same in this regard. Employees assert that specific actions of their employing carrier work a change in existing working conditions and therefore violate an RLA status quo obligation; the employer responds by contending that

it has a right, under its existing agreements (including implied terms arising from past practices), to act as it has been acting. *Conrail* establishes that the carrier's showing that its claimed right is "arguable" ends the debate so far as the court is concerned. Nowhere in the exchange is the carrier called upon to find a contractual basis for a general right "to alter the status quo," or to act "flexibly" in connection with working conditions generally. And this case matches the paradigm. The court of appeals was quite confident that the NS carriers' specific claim to the right to abolish jobs and furlough employees as a result of rail line dispositions was based on an "arguably justified" interpretation of existing agreements and therefore satisfied the *Conrail* standard and required dismissal of the lawsuit for lack of jurisdiction. Pet. App. 8a.[13]

3. There is no conflict in the circuits regarding application, in rail line sale cases, of the principle that a carrier, having satisfied the *Conrail* standard, is free to continue to apply its interpretation of its ex-

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[13] As authority for collapsing the minor dispute and status quo standards into a single matter for judicial consideration, petitioners cite only *Southern Ry. v. Brotherhood of Locomotive Firemen & Enginemen*, 337 F.2d 127 (D.C. Cir. 1964). Pet. 21-22. There, a railroad was enjoined from making a specific change in existing working conditions during the RLA § 6 status quo period, notwithstanding the pendency of an adjustment board proceeding. The case has no relevance here; the D.C. Circuit described the railroad's proposed action as contrary to the "long-standing interpretation . . . which had been given by the parties to the existing contract," 337 F.2d at 132, making clear that the railroad could not have satisfied the *Conrail* minor dispute standard and thus the district court retained jurisdiction to enjoin the railroad from making a unilateral change in the status quo.

isting agreements pending resolution of the interpretive question through arbitration. The decision of the court of appeals in this case is consistent with decisions rendered by the Second,[14] Third,[15] and Seventh[16] Circuits in other line sale cases, and it conflicts with no other appellate decision in which a controversy over line sales was found to present a minor dispute. There is no foundation for petitioners' attempt, Pet. at 23, to depict the circuits as "hopelessly at odds" over the application of the *Conrail* standard in such circumstances.[17]

To be sure, the Eighth Circuit has declined to apply the minor dispute analysis to a particular line sale case. *Railway Labor Executives' Association v. Chicago & North Western Transportation Co.*, 890 F.2d 1024 (8th Cir. 1989), *cert. denied*, 110 S. Ct. 3237 (1990). It may be, as one of the judges stated, 890 F.2d at 1027-28 (Magill, J., dissenting), that the court

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[14] *CSX Transportation, Inc. v. United Transportation Union*, 879 F.2d 990 (2d Cir. 1989), *cert. denied*, 110 S. Ct. 720 (1990).

[15] *General Committee of Adjustment v. CSX R.R. Corp.*, 893 F.2d 584 (3d Cir. 1990).

[16] *Chicago & North Western Transportation Co. v. Railway Labor Executives' Association*, 855 F.2d 1277 (7th Cir.), *cert. denied*, 109 S. Ct. 493 (1988); *Chicago & North Western Transportation Co. v. Railway Labor Executives' Association*, 908 F.2d 144, 157-58 (7th Cir. 1990), *pet. for cert. filed*, No. 90-991 (December 19, 1990).

[17] Nor does this case present any occasion for the Court to decide the scope of a railroad's *bargaining* obligation when a minor dispute exists. Petitioners here sought enforcement of the RLA's status quo obligation, not an order requiring bargaining; the court of appeals assumed that bargaining over petitioners' section 6 notices was required, Pet. App. 9a, and did not relieve respondents of any bargaining obligation.

was there presented with an inadequately developed record on which to decide whether a minor dispute existed. The court also appears to have read *Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Association*, 109 S. Ct. 2584 (1989), a case in which the minor dispute defense was not asserted and the issue was not addressed, as having established a rule that all disputes over line sales are properly considered major. 890 F.2d at 1026; see *id.* at 1028 n.4 (Magill, J., dissenting). In any event, the Eighth Circuit readily concluded that a railroad's line sale did not violate the status quo obligation of RLA § 6. 890 F.2d at 1025.[18]

There is certainly no conflict in the circuits as to the *results* when labor unions bring variously framed RLA-based challenges to railroad line sales. These challenges have appropriately been rejected, and there is no errant pattern of decision for this Court to correct.

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[18] Petitioners assert (Pet. 23) that a conflict in the circuits is demonstrated by disagreement among judges of the District of Columbia Circuit as to whether to grant *en banc* rehearing in *Air Line Pilots Association v. Eastern Air Lines, Inc.* The question at issue there was whether a minor dispute could be found to exist after expiration of the pertinent labor agreement—a point that is of no relevance here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 1991